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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,444	01/23/2004	Andrew Halliday	67641	7421
48940 7590 03/17/2008 FITCH EVEN TABIN & FLANNERY 120 S. LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER ALEXANDER, REGINALD				
ART UNIT		PAPER NUMBER		
3742				
MAIL DATE		DELIVERY MODE		
03/17/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/763,444

**Applicant(s)**

HALLIDAY ET AL.

**Examiner**

Reginald L. Alexander

**Art Unit**

3742

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 and 23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-8 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9-13 and 18-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyd et al. in view of Sargent and Gutwein et al.

There is disclosed in Boyd a beverage preparation system, comprising: a plurality of beverage cartridges 10 having code 30 written thereon; means 114, 116 for receiving one of the plurality of cartridges and means 110 for supplying an aqueous medium; a reader 130 for automatically interpreting the code; processing means 140 for creating specific brewing cycle based on the code; means 150 for automatically adjusting a temperature of the aqueous medium based on the code.

There is disclosed in Sargent a beverage cartridge including different means (foaming agents, filters, apertures) for producing foaming of the beverage.

There is disclosed Gutwein et al. a user interface for initiating an operating cycle of a beverage preparation system, the cycle being independent of a beverage type being dispensed by the system.

It would have been obvious to one skilled in the art to provide cartridges of Boyd with the foaming means taught in Sargent, in order to produce a foaming liquid beverage.

It would have been obvious to one skilled in the art to provide the device of Boyd with the user interface taught in Helberg, in order to allow a user to make automatic selections of various types of beverages.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-13 and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyd et al.

There is disclosed in Boyd a beverage preparation system, comprising: a plurality of beverage cartridges 10 having code 30 written thereon; means 114, 116 for receiving one of the plurality of cartridges and means 110 for supplying an aqueous medium; a reader 130 for automatically interpreting the code; processing means 140 for creating specific brewing cycle based on the code; means 150 for automatically adjusting a temperature of the aqueous medium based on the code.

In regards to the operating characteristics of the beverage preparation system stored by the memory, it is the opinion of the examiner that the various brewing directives (instructions) are characteristics of the machine. Since the machine must perform functions such as brewing water temperature changes and flow rates, such are considered characteristics of the machine.

In regards to claims 20-22, the recited functions of the device as a result of the information stored in the memory, are a result of user preferences for the memory. They do not constitute a structural limitation.

***Allowable Subject Matter***

Claims 3-8 are allowed.

***Response to Arguments***

Applicant's arguments filed 15 January 2008 have been fully considered but they are not persuasive. Applicant argues that the Gutwein reference fails to disclose a user interface for initiating an operating cycle where the cycle is independent of a beverage type being dispensed.

At column 20, lines 56-63 of Gutwein it is disclosed that the user interface can be customized, where there is only presented an express formulation for choosing by the user, and all other decisions are automatically completed by the system.

Applicant argues that Boyd fails to disclose a memory for storing information about operating characteristics used by the beverage preparation machine to dispense a beverage. Applicant goes on to state that Boyd does not disclose a memory for storing information after dispensing a cartridge.

Boyd, at paragraph 0033 lines 3-11, states that the machine interpretable feature of the cartridge acts as an identifier for brewing directives and beverage ingredients that may be looked up from a data storage 150 (memory). The brewing directives relating to such things as liquid temperature, amount of liquid and brewing times. These are operating characteristics used by the beverage preparation machine to dispense a

beverage from the beverage cartridges. Claim 9 recites that very language. There is nothing recited in claim 9 about before or after dispensing information. The information stored in the Boyd memory is there for before and after brewing has taken place.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/  
Primary Examiner, Art Unit 3742